

California Regional Water Quality Control Board  
Santa Ana Region  
Staff Report  
April 4, 2003

**ITEM:** 17

**SUBJECT:** Mandatory Penalty Complaint No. R8-2003-0032,  
Lenny's Auto & Truck Wrecking, Santa Ana, Orange County

**BACKGROUND**

On February 28, 2003, the Executive Officer issued Mandatory Penalty Complaint (MPC) No. R8-2003-0032 (copy attached) to Mr. Leonard Gomez, owner of Lenny's Auto & Truck Wrecking (Lenny's Auto) for alleged violations of the State General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the MPC, the Executive Officer proposed a mandatory minimum penalty of \$5,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed mandatory penalty assessment against Lenny's Auto.

MPC No. R8-2003-0032 was issued by the Executive Officer to Lenny's Auto for failure to obtain coverage under the General Permit, after appropriate notification, as per Water Code Section 13399.30.

**DISCUSSION**

The General Permit regulates the discharge of storm water from industrial sites, as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$700), with the State Water Resources Control Board. To date, Lenny's Auto has failed to file a NOI and obtain coverage under the General Permit for the facility located at 1045 East 6<sup>th</sup> Street in Santa Ana. Lenny's Auto is primarily engaged in dismantling motor vehicles for the purpose of selling parts, and these activities are described by Standard Industrial Classification (SIC) code 5015. This SIC code identifies Lenny's Auto as a recycling facility, and coverage is mandatory, in accordance with the General Permit.

On November 1, 2002, Board staff (staff) inspected Lenny's Auto to assess the nature of industrial operations and to determine whether storm water discharges associated with industrial activity occur at the site. During that inspection, staff informed Mr. Gomez that permit coverage is required for this type of business and that he should file a NOI with the State Water Resources Control Board (State Board). In addition, staff observed that Lenny's Auto had exposure of materials, wastes, and equipment to storm water runoff. A Notice of Noncompliance was issued on November 6, 2002,

via certified mail to Mr. Gomez, requiring Lenny's Auto to submit a NOI for coverage under the General Permit, and detailing conditions observed at the site that were in violation of General Permit requirements.

Lenny's Auto did not respond to the November 6, 2002, Notice of Noncompliance. A second Notice of Noncompliance was issued on December 16, 2002, via certified mail to the attention of Mr. Gomez, requiring Lenny's Auto to immediately file a NOI to obtain coverage under the General Permit no later than January 8, 2003. In addition, this letter requested that Mr. Gomez immediately address the findings outlined in the Notice of Noncompliance and submit a letter specifically addressing each problem, along with a copy of the Storm Water Pollution Prevention Plan (SWPPP) for this facility to the Board office no later than January 26, 2003. To date, Lenny's Auto has not responded to the Notice of Noncompliance letters, nor has Lenny's Auto submitted a NOI or a Notice of Nonapplicability that specifies any basis that coverage under an NPDES permit is not required.

Staff researched State Board files and found that Mr. Gomez has been the owner/operator of record for various auto dismantling businesses for a number of years and has filed for coverage under the General Permit for these businesses. The businesses for which Mr. Gomez previously filed for coverage under the General Permit include: California Import & American Auto & Truck Dismantler, WDID No. 830S011585, NOI signed by Leonard Gomez on May 1, 1995; California Auto Recycling, WDID No. 830S013480, NOI signed by Leonard Gomez on October 13, 1997; and Parts Unlimited Auto & Truck Dismantler, WDID No. 830S015438, NOI signed by Juanita Gomez on September 30, 1999. Therefore, Mr. Gomez has been aware of the requirements of the General Permit for over seven years.

Section 13399.33 of the California Water Code (CWC) requires that the Regional Board issue a mandatory penalty for at least \$5,000, for failure to submit the required NOI within 60 days from the date on which the original Notice of Noncompliance was sent. Further, Section 13399.33(a) provides that a mandatory penalty must be administratively imposed by the Board in an amount that is not less than five thousand (\$5,000) per year of noncompliance or fraction thereof, unless the Board makes express findings based on specific factors listed in Section 13399.33(a)(2). These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements to obtain coverage under the General Permit and the need to develop and implement a SWPPP to control the discharge of pollutants in storm water runoff. Furthermore, the discharger was notified, by certified mail and orally, of the need to obtain coverage under the General Permit.

2. Ability to Pay the Proposed Assessment

The discharger has indicated that he is facing some financial difficulties, but has not provided any information to support his claim.

3. Prior History of Violations

Lenny's Auto is a new business and has not been previously cited by this office. However, as the owner/operator of Parts Unlimited Auto & Truck Dismantler, Mr. Gomez currently has unpaid General Permit fees totaling \$1,200 (WDID No. 830S015438).

4. Degree of Culpability

The storm water regulations are applicable to all industrial activities. All dischargers, including Lenny's Auto, are responsible for compliance with the Clean Water Act. Lenny's Auto is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act. Lenny's Auto had been repeatedly warned about these violations.

5. Economic Benefit or Savings, if any, Resulting from the Violations

The permit fee for coverage under the General Permit is \$700 per year. By failing to develop and implement an effective SWPPP and implement appropriate BMPs, Lenny's Auto gained an economic advantage over their competitors. It also appears that the employees were not properly trained to handle spills, leaks, and general housekeeping. Economic savings from these violations are estimated as follows:

Cost to develop and implement proper SWPPP on a year-round basis	\$3,000
Cost to train employees	\$1,000
Cost to obtain coverage	\$700
Total cost savings	<hr/> = \$4,700

**STATEWIDE ENFORCEMENT POLICY**

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. The above-described mandatory penalty complaint is in accordance with the State Enforcement Policy.

**RECOMMENDATION**

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$5,000 specified in the Mandatory Penalty Complaint issued by the Executive Officer on February 28, 2003.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

**In the matter of:**

**Leonard Gomez, Owner  
Lenny's Auto & Truck Wrecking  
1045 East 6<sup>th</sup> Street  
Santa Ana, CA 92701**

**Complaint No. R8-2003-0032  
for  
Mandatory Penalty**

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), must impose liability under Section 13399.33 of the California Water Code.
2. A hearing concerning this Complaint is scheduled for the Board's regular meeting on April 4, 2003, at the Cucamonga County Water District, 10440 Ashford Street, Ranch Cucamonga. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of mandatory penalties by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed Mandatory Penalty Complaint or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Most facilities that discharge storm water associated with industrial activities are required to get coverage under the State's General Permit for Storm Water Discharges Associated Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facilities that are required to get permit are listed by industrial category and by Standard Industrial Classification (SIC) codes in 40 CFR Section 122.26(b)(14) and in Attachment 1 of the General Permit.
5. Lenny's Auto & Truck Wrecking (hereinafter Lenny's Auto) primarily dismantles motor vehicles for the purpose of selling parts, and these activities are described by SIC code 5015. The facility is located at 1045 East 6th Street, Santa Ana, is owned by Mr. Leonard Gomez and has been in business for several months. Coverage under the general permit is mandatory for automobile dismantling operations and coverage must be obtained prior to start of operations. Mr. Gomez has been operating at this site without filing a Notice of Intent (NOI) to obtain coverage under the State's General Permit.
6. On November 1, 2002, Board staff (staff) inspected Lenny's Auto to assess the nature of industrial operations and to determine whether storm water discharges associated with industrial activity occur at the site. During that inspection, staff informed Mr. Gomez that permit coverage is required for this type of business and that he should file a NOI with the State Water Resources Control Board (State Board). A Notice of Noncompliance was issued on November 6, 2002, via certified mail to Mr. Gomez, requiring Lenny's Auto to

submit a NOI for coverage under the General Permit, and detailing conditions observed at the site that were in violation of the General Permit requirements.

7. Mr. Gomez also own Parts Unlimited Auto & Truck Dismantler (hereinafter Parts Unlimited), located at 692 N. Cypress Street in the City of Orange. Parts Unlimited is covered under the General Permit, WDID number 830S015438. As such, he is aware of the requirements to obtain coverage under the General Permit. However, for the Parts Unlimited site, he is in violation of the General Permit as he has failed to pay the invoices for coverage under the General Permit.
8. Lenny's Auto received, but did not respond to, the November 6, 2002, Notice of Noncompliance.
9. A second Notice of Noncompliance was issued on December 16, 2002, via certified mail to the attention of Mr. Gomez, requiring Lenny's Auto to immediately file a Notice of Intent to obtain coverage under the General Permit by January 8, 2003. In addition, the second Notice of Noncompliance instructed Mr. Gomez to immediately address the findings outlined in the original Notice of Noncompliance and to submit a letter specifically addressing each problem, along with a copy of the SWPPP for this facility, to the Regional Board office by January 26, 2003. To date, Lenny's Auto has not submitted a Notice of Intent or a Notice of Nonapplicability that specifies any basis that coverage under an NPDES permit is not required, nor has Lenny's Auto responded to either of the two Notices of Noncompliance.
10. Pursuant to Section 13399.30(c)(2) of the California Water Code, if a discharger fails to submit the required Notice of Intent to the Regional Board within 60 days from the date on which the original Notice of Noncompliance was sent, the Board shall impose the penalties described in subdivision (a) of Section 13399.33 of the California Water Code.
11. Pursuant to Section 13399.33(a) of the California Water Code, the Regional Board shall impose a mandatory penalty administratively in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof, unless the Board makes express findings based on specific factors listed in Section 13399.33(a)(2). These factors include the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator the ability to pay, any prior history of violations, the degree of culpability, economic benefits, or savings resulting from the violation, and other matters as justice may require.
12. After consideration of the factors specified in Section 13399.33(a)(2), the Executive Officer proposes that a mandatory penalty be imposed on Mr. Leonard Gomez by the Board in the amount of \$5,000.

#### **WAIVER OF HEARING**

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board, for the amount of mandatory penalty proposed under Paragraph 11. These documents should be mailed to Sacramento in the enclosed envelope.

In the matter of:

Mr. Leonard Gomez, Owner  
Lenny's Auto & Truck Wrecking  
1045 East 6th Street  
Santa Ana, CA 92701

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Complaint No. R8-2003-0032  
for

Mandatory Penalty

#### WAIVER OF HEARING

I agree to waive my right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0032 regarding Lenny's Auto & Truck Wrecking.

I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$5,000. I understand that I am giving up my right to be heard and to argue against allegations made by the Executive Officer in this Complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Leonard Gomez, Owner (Lenny's Auto & Truck Wrecking )

If you have any questions, please contact Mark Smythe at (909) 782-4998, or Michael Adackapara, at (909) 782-3238. For legal questions, contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

2/28/03

Date

for Gerard J. Thibeault  
Executive Officer



# California Regional Water Quality Control Board

## Santa Ana Region



Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>  
3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis  
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.  
For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.swrcb.ca.gov/rwqcb8](http://www.swrcb.ca.gov/rwqcb8).*

February 28, 2003

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Leonard Gomez, Owner  
Lenny's Auto & Truck Wrecking  
1045 East 6<sup>th</sup> Street  
Santa Ana, CA 92701

**MANDATORY PENALTY COMPLAINT NO. R8-2003-0032**

Dear Mr. Gomez:

We are enclosing a certified copy of Complaint No. R8-2003-0032, proposing a mandatory penalty of \$5,000 for violations of the California Water Code and the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ, NPDES No. CAS000001. An invoice for this amount is also enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on April 4, 2003. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check or money order for \$5,000. The check or money order should be made payable to the State Water Resources Control Board. The waiver form, the bottom portion of the invoice and the check should be mailed to Sacramento using the enclosed envelope. All other correspondence regarding this Complaint should be sent to this office at the address on this letterhead.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff can be arranged. Should you wish to schedule a pre-hearing meeting, please call us prior to March 15, 2003. At that time, you may submit information that may not have been previously available to staff regarding this matter.

**California Environmental Protection Agency**



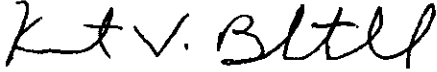
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February 28, 2003

If you have any questions regarding this complaint, you may contact Mark Smythe at (909) 782-4998, or Michael Adackapara at (909) 782-3238. All legal questions should be referred to our legal counsel, Jorge Leon, at (916) 341-5180.

Sincerely,



for Gerard J. Thibeault  
Executive Officer

Enclosures: Complaint No. R8-2002-0032, Waiver Form, Invoice and envelope

Cc w/ enclosures:

Regional Board

State Water Resources Control Board, Division of Water Quality – Bruce  
Fujimoto

State Water Resources Control Board, Office of Chief Counsel – Jorge Leon

U.S. Environmental Protection Agency, Region 9 (WTR-7) – Paul Michel

Orange County Public Facilities & Resources Dept. – Chris Crompton

City of Santa Ana, NPDES Coordinator – Harry Chin

Orange County Coast Keeper – Garry Brown

Lawyers for Clean Water – Daniel Cooper

Lawyers for Clean Water – Kimberly Lewand

